NOTES OF CASES.

Revocation of Permit by City.—An ordinance of Chicago prohibits the use of the space under the roadway of any street or public ground. Appellee in the case of Burton *v.* City of Chicago, 86 Northwestern Reporter, 93, had secured from the commissioner of public works a permit to use the space under an alley, and had incurred expense in the making of plans and purchase of material for a building to be erected, a vault of which was to occupy the underground space. The Supreme Court of Illinois held that an alley was a roadway, within the ordinance, and that appellee should have known that the commissioner had no right to issue such a permit, and notwithstanding the fact that appellee had incurred expense by relying on it the city was not estopped to revoke it.

Release of Promise of Marriage.—In Henderson *v.* Spratten, 98 Pacific Reporter, 14, it appeared that the parties cohabited subsequent to defendant's promise to marry plaintiff, and at his instance and request she submitted to severe surgical operations, causing her serious injuries and unfitting her to perform domestic and wifely duties. In consideration of her agreement to release him from his promise of marriage he agreed to take care of her and support her as long as she suffered from her injuries. His claim was mainly that there was no consideration for the contract, and that there could be no novation of a void contract. The Supreme Court of Colorado held that plaintiff in agreeing to release the defendant from the promise of marriage in consideration of his agreement to support and maintain her, and provide her with medical attendance, was not substituting a valid contract for a void one, but was making a legal contract and releasing the defendant from a legal contract.

Flagrant Misconduct of Counsel.—In State *v.* Kaufmann, 118 Northwestern Reporter, 337, that case which has been so glaringly presented by the press, Emma Kaufmann, having been convicted of manslaughter, appealed from an order denying a new trial. Many errors were set forth, the most apparent of these being the misconduct of the prosecuting attorney. His efforts to convict led him into asking witnesses improper questions and arguing for their propriety, thus calling them to the attention of the jury. Frequent impassioned, sensational appeals made to the jury and sometimes to the onlookers characterized his address. The Supreme Court of South Dakota reversed the order refusing a new trial, remarking that "to sustain the conviction, upon the record before us, would mean the approval of methods of procedure inevitably subversive of the most sacred constitutional rights, it would encourage—where no

encouragement is needed—disregard of universally recognized professional obligations, and ultimately render the administration of justice in this jurisdiction a disgrace to American civilization."

Instructing White People and Negroes Together.—Berea College was organized under Act March 9, 1854, authorizing the incorporation of voluntary associations, which was amended in 1856 by reserving to the General Assembly the right to alter or repeal the charter of any association formed thereunder. In Berea College *v.* Commonwealth of Kentucky, 29 Supreme Court Reporter, 33, it appeared that the college was fined for teaching both white and negro pupils contrary to an act passed in 1904. The point of contention was whether this later statute was a valid amendment of the charter. The Supreme Court of the United States held that the act prohibited any person, corporation, or association of persons from doing the acts named, and it substantially declares that any authority given by previous charters to instruct the two races at the same time in the same place is revoked, and that prohibition, being a departure from the terms of the original charter in this case, may properly be adjudged an amendment.

Foam and Gas Are Not Beer.—One Nylin was indicted under a statute prohibiting the sale of beer in quantities less than five gallons. It seems that N. had been selling cases of beer containing bottles the total capacity of which was at least five gallons. Persons ardent in the enforcement of the liquor law procured several of these cases and measured the contents, minus foam and gas, in measures tested by the Secretary of State. Nylin thought that gas and foam were a constituent of the amber fluid, and that the cases sold contained the required amount. The Supreme Court of Illinois in People *v.* Nylin, 86 Northeastern Reporter, 156, remarked tnat gas is an aeriform fluid, but not a liquor and held that the measurement intended by the statute was of the quiet liquor after it had been released from confinement and reached a quiet condition in the open air.

Liability of Heirs for Breach of Marriage Promise.—Promisor, in the case of Johnson *v.* Levy, 43 Southern Reporter, 46, and 47 Id. 422 having seduced plaintiff under promise of marriage, was killed by her father on his refusal to marry her. It was alleged that a demand had been made on the promisor to comply with his engagement to marry plaintiff, and he had refused. The Supreme Court of Louisiana held that, as a result of the putting in default, the obligation to marry, which could have been fulfilled by the obligor alone, became merged in the obligation to respond in damages for